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In the Supreme Court

OF THE

United States

OCTOBER TERM, 1983

CONRAD JOYNER,

PETITIONER,

vs.

ROSE MOFFORD, ET AL.,

RESPONDENTS.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF IN OPPOSITION

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QUESTION PRESENTED FOR REVIEW

Does Arizona's constitutional provision forbidding state elective officials from remaining in office if they run for Congress before the final year of their term violate the Qualifications Clause of the United States Constitution?

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OPINIONS BELOW

The opinion of the District Court for the District of Arizona is reported at 539 F. Supp. 1120 (1982). Appendix A to Petitioner's Brief.

The opinion of the United States Court of Appeals for the Ninth Circuit is reported at 706 F.2d 1523 (1983). Appendix B to Petitioner's Brief.

STATEMENT OF THE CASE

Arizona regulates the conduct of state salaried, elected officials by requiring those who run for other elected positions before the final year of their term to resign or be removed from office. Ariz. Const., Art. XXII, § 18. This requirement does not deny the elected, salaried officials access to the ballot by preventing them from running for another office, nor does it prevent the filing of nominating petitions.

The petitioner, Conrad Joyner, was elected to the Pima County Board of Supervisors for a four-year term beginning in 1980. The following year he announced his candidacy for the newly-created fifth congressional district of Arizona. He desired to keep his Board of Supervisors position while campaigning for Congress in order to complete his term as supervisor if he was unsuccessful in his pursuit for Congress. The petitioner filed a complaint in United States District for the District of Arizona seeking to have Art. XXII, § 18 of the Arizona Constitution declared unconstitutional and to enjoin the respondents from enforcing the provision. The District Court had jurisdiction over the defendants pursuant to 28 U.S.C. §§ 1331, 1343, 2201 and 2202.

The parties promptly filed cross-motions for sum-

mary judgment.[1] The petitioner argued *inter alia* that the Arizona constitutional provision violated the qualifications clause of the United States Constitution (Art. I, § 2, Clause 2) because it added a fourth qualification for any person running for Congress. The respondents argued that the provision did not add a qualification but only sought to control the activity of the state officeholders. The District Court held that the Arizona constitutional provision was overly broad and stated that "perhaps a more narrowly defined statute with more narrowly placed state interests could survive a constitutional challenge." *Joyner v. Mofford*, 539 F. Supp. 1120, 1124 (D.Ariz. 1982) (Petitioner's Brief, Appendix A). The court concluded that the Arizona constitutional provision violated Art. I, § 2, Clause 2, and Art. I, § 5, Clause 1, of the United States Constitution.

Reversing the District Court, the Ninth Circuit rendered its decision in *Joyner v. Mofford*, 706 F.2d 1523 (9th Cir. 1983). The court acknowledged that there are but three qualifications — age, citizenship and residency — which are exclusive and that neither Congress nor the states may require more of a candidate. *Powell v. McCormack*, 395 U.S. 486 (1969). The Ninth Circuit also distinguished state laws which bar a candidate from running for federal office from state laws such as Arizona's which regulate the conduct of state officeholders. In the unanimous decision, Judge Sneed

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[1]The defendants were Rose Mofford, Secretary of State, State of Arizona; Robert Corbin, the Attorney General for the State of Arizona, and Stephen Neely, the County Attorney for Pima County, State of Arizona. Defendant Rose Mofford is statutorily required to accept petitions for candidates for federal office. Robert K. Corbin, the Attorney General, is authorized to bring an action to remove persons from office who unlawfully hold any public office within the State. A.R.S. § 12-2041. In addition, Stephen Neely, the County Attorney, is also empowered pursuant to A.R.S. § 12-2042 to bring the same type of action.

stated that the former type of law imposed an additional qualification on the candidate and was in violation of the qualifications clause, while the latter category was constitutionally acceptable because it merely regulated the conduct of state officeholders by removing them from their elected positions should they choose to run for Congress.[2] *Joyner*, 706 F.2d at 1528. The court held:

> [W]e conclude Article 22, § 18 does not impose a fourth qualification on candidates for Congress because it does not prevent an elected state officeholder from running for federal office. Nor does it prohibit the filing for nomination to Congress by an elected state officeholder; the Arizona Secretary of State allowed Joyner to file for nomination for Congress.
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> *Id.* at 1531.

The final mandate was issued by the Ninth Circuit Court of Appeals on August 31, 1983.

ARGUMENT

THE RESULT REACHED BELOW DOES NOT WARRANT REVIEW

A. *The Decision of the Ninth Circuit Is Consistent with this Court's Decisions Interpreting the Qualifications Clause*

The petitioner requests this Court to exercise its discretionary jurisdiction to review the decision of the Ninth Circuit because that decision is allegedly inconsistent with

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[2]The Ninth Circuit also rejected petitioner's claim that he was denied equal protection of the laws. *Joyner v. Mofford*, 706 F.2d at 1531-35. This question has not been presented for review in the petition for writ of certiorari and therefore has been waived. *Irvine v. California*, 347 U.S. 128, 129 (1954).

this Court's decision in *Powell v. McCormack*, 395 U.S. 486 (1969).[3] In that case, Adam Clayton Powell was elected to the 90th Congress, House of Representatives. Pursuant to a House Resolution, he was not permitted to take his seat due to his alleged misconduct in the 89th Congress. This Court held that the requirements of age, citizenship and residency were exclusive and that Congress could not impose other qualifications.

The impermissible exclusion of Adam Clayton Powell does not render Arizona's law invalid. The Ninth Circuit correctly read *Powell* as a general prohibition against setting "extra-constitutional qualifications for taking a seat in the House of Representatives." 706 F.2d at 1528. *Powell* does not proscribe any state action which may impact upon a person's decision to be a candidate for Congress as a violation of the Qualifications Clause of the United States Constitution. Unlike Powell, who was denied his seat by Congress after being duly elected, Joyner, the petitioner, was qualified under Arizona law, filed his nominating petitions and ran for Congress. Arizona placed no barriers between Joyner and the ballot box.

When analyzed, the petitioner's argument is not based upon a conflict between the Ninth Circuit's decision and this Court's decision in *Powell*. The petitioner's complaint is the distinction courts draw between state provisions which bar a potential candidate from running for Congress which violate the Qualifications Clause and those

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[3]The petitioner also relies on Justice Black's "in chambers" opinion in *Davis v. Adams*, 400 U.S. 1203 (1970). That case is factually distinguishable because it involved a Florida law which denied state officeholders access to the ballot. Moreover, as admitted by petitioner in the opening brief, it is "not controlling authority" in any event. Petitioner's Brief at 7.

provisions which merely regulate the conduct of the state official and do not violate the Clause. *E.g., Joyner v. Mofford*, 706 F.2d 1528-31; *Signorelli v. Evans*, 637 F.2d 853, 858-59 (2d Cir. 1980). The petitioner wants this Court to adopt a broad, new prohibition against all state laws which in any way affect a person's decision to run for Congress. This position ignores valid state interests in regulating its own state-created offices. Arizona's law may have affected the petitioner's decision to run for Congress, but it did not prevent him from running. Indeed, the petitioner filed his nominating petitions and he ran for Congress notwithstanding Arizona's law. There was no impermissible interference with the Qualifications Clause as addressed by this Court in *Powell*.

The petitioner insists that the Arizona provision limits the number of potential candidates available for Congress. However, the remedy of disqualifying a state officeholder for a state office upon becoming a political candidate for Congress has been suggested to be a *de minimis*, *Clements v. Fashing*, ____ U.S. ____, 102 S.Ct. 2836 (1982) and indirect, *Signorelli*, effect on candidacy.[4] It is not a basis for the granting of certiorari.[5]

B. *The Qualifications Clause Was Correctly Interpreted*

The petitioner inappropriately relies upon the alleged need for national uniformity in this area of the law

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[4]The Arizona law is certainly less restrictive and less burdensome than laws which deny civil servants the freedom to run as candidates for Congress or any other office. *Broadrick v. Oklahoma*, 413 U.S. 601 (1973); *United States Civil Service Commission v. National Association of Letter Carriers*, 413 U.S. 548 (1973).

[5]The petitioner is not aided in his observation that this exact question has not been resolved by this Court. There is no reason why it should be. That fact has never been a recognized basis for the granting of certiorari.

as a basis for granting certiorari. There is no inconsistency or confusion. A state law which denies the candidate access to the ballot has been uniformly struck down. *Joyner v. Mofford*, 706 F.2d 1529, n. 4. A state law which merely regulates the conduct of state officeholders is constitutionally acceptable. *Id.*; *Signorelli v. Evans*; *Oklahoma State Election Bd. v. Coats*, 610 P.2d 776 (Okl. 1980); *Adams v. Supreme Ct.*, 502 F. Supp. 1282 (M.D. Pa. 1980); *Alex v. County of L.A.*, 35 Cal. App.3d 994, 111 Cal. Rptr. 285 (1974). As the Ninth Circuit observed below, so long as the state places no impediment between the candidate and his access to the ballot, there is no violation of the Qualifications Clause. Indeed, of the approximately 30 cases cited by the parties relating to this issue, the determinative factor was always access to the ballot. In this case the petitioner had complete access to the ballot as a qualified candidate.

CONCLUSION

There is no federal mandate that the taxpayers of Arizona must subsidize their elected officers while they are running for Congress. The petitioner was elected to the County Board of Supervisors of his own choice and he must account for and make arrangements to cope with the limitations and burdens of that particular state office. The citizens of Arizona expect the petitioner to devote himself to county business, not to divert his attentions to partisan politics one year after his election to a four-year term. The desires of the people of Arizona are reflected in their constitutional provision, Art. XXII, § 18. It fosters their confidence in their elected officials and it in no way restricted the petitioner's ability to run for Congress in this case. Respondents therefore request this Court to deny the petition for certiorari.

RESPECTFULLY SUBMITTED,

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